

ESTTA Tracking number: **ESTTA446364**

Filing date: **12/14/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Pure Storage, Inc.
Granted to Date of previous extension	12/14/2011
Address	650 Castro Street, Suite 220 Mountain View, CA 94041 UNITED STATES
Correspondence information	Todd S. Bontemps Cooley LLP 777 6th Street NW Washington, DC 20001 UNITED STATES trademarks@cooley.com, tbontemps@cooley.com Phone:650-843-5490

Applicant Information

Application No	85287297	Publication date	08/16/2011
Opposition Filing Date	12/14/2011	Opposition Period Ends	12/14/2011
Applicant	InMage Inc. Ste 104 3255-1 Scott Blvd Santa Clara, CA 95054 UNITED STATES		

Goods/Services Affected by Opposition


Class 009. All goods and services in the class are opposed, namely: Computer software and systems for data protection, and data and application recoverability

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85111690	Application Date	08/19/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	P PURESTORAGE		

Design Mark	
Description of Mark	The mark consists of stylized hexagon "P" in front of the word "PURESTORAGE". The letters "PURE" are in bold type face.
Goods/Services	Class 009. First use: flash memory array

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PURE STORAGE		
Goods/Services	computer data memory and storage systems; consultation services in the fields of computer data memory, retention and protection systems		

Related Proceedings	None
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Attachments	85111690#TMSN.jpeg (1 page)(bytes) PURE.pdf (5 pages)(43560 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/TSB5/
Name	Todd S. Bontemps
Date	12/14/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 85/287297
For the Trademark: **PURESPLIT**
Published in the Official Gazette on August 16, 2011

PURE STORAGE, INC.)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
INMAGE INC.)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Pure Storage, Inc. (“Pure Storage” or “Opposer”), a Delaware corporation having its principal place of business at 650 Castro Street, Suite 220, Mountain View, California 94041 will be damaged by the issuance of a registration for the mark PURESPLIT (the “Applicant’s Mark” or “PURESPLIT mark”), as applied for in Application Serial No. 85/287297 filed on April 6, 2011 by Applicant InMage Inc. (“Applicant”).

As grounds for opposition, Pure Storage alleges:

1. Pure Storage markets and distributes flash memory array systems for computer data collection, backup, and retention. Pure Storage has used the PURE STORAGE company name and trade mark in connection with its enterprise data protection and data storage business since 2009.

2. Pure Storage has acquired US common law rights in the PURE STORAGE trademark and owns the following pending trademark application in the United States:

PURESTORAGE And Design (Ser. No. 85/111690), filed August 19, 2010, for “flash memory array” in International Class 09 (collectively, the “PURESTORAGE Marks”).

3. By virtue of its efforts, and by virtue of the high quality of its goods and services, the public has come to know, rely on, and recognize the PURE STORAGE Marks as source identifiers for Pure Storage’s enterprise data protection and recovery products and services. Pure Storage has gained valuable reputation and a substantial amount of goodwill through the use and recognition of its PURESTORAGE Marks.

4. Upon information and belief, Pure Storage alleges that on April 6, 2011 Applicant filed an Application to register the mark PURESPLIT on an intent-to-use basis (Section 1(b)). Applicant seeks registration in connection with the following goods and services:

International Class 09: “Computer software and systems for data protection, and data and application recoverability.”

5. Due to the similarity in sight, sound and meaning, Applicant’s Mark is likely to be confused with and mistaken for Opposer’s PURESTORAGE Marks. As Applicant’s Mark contains the identical first “PURE” mark component, it is the dominant portion of the mark that will be first seen, first pronounced, and/or first heard by consumers. The additional “SPLIT” term does not obviate the similarity between the marks and fails to overcome a likelihood of consumer confusion. Consumers familiar with Opposer’s products and services are unlikely to distinguish Applicant’s PURESPLIT mark from Opposer’s PURE STORAGE company name or its PURESTORAGE branded products and services.

6. If Applicant's Mark is allowed to register, a likelihood of confusion will be created for consumers of enterprise data protection and data recovery software and hardware. Applicant's Mark is used in connection with goods and services that are highly related to Pure Storage's goods and services, namely, data protection and data recovery systems. The relevant consumers and customers of Applicant's data protection and data recovery systems and services are highly similar to the customers of Pure Storage's flash memory arrays and related services.

7. In addition to overlapping consumer bases, Applicant's intended channels of trade for its goods and services overlaps with the channels of trade for Pure Storage's goods and services, namely, via the telephone, face-to-face meetings with sales representatives, and the Internet.

8. If Applicant is permitted to register its PURESPLIT mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Pure Storage would likely occur. Persons familiar with Pure Storage's marks would likely perceive Applicant's products as associated or affiliated with or sponsored by Pure Storage. Such confusion would inevitably result in damage to Opposer.

9. Customers of Pure Storage's goods and services and the relevant public are likely to misapprehend Applicant's PURESPLIT mark as a Pure Storage trademark and/or believe in error that goods offered under the PURESPLIT mark are offered by or in association with or under license from Pure Storage.

10. Any defect, objection to or fault found with Applicant's goods marketed under the PURESPLIT mark would necessarily reflect on and seriously injure the reputation that Pure Storage has established for its storage arrays and related consulting services.

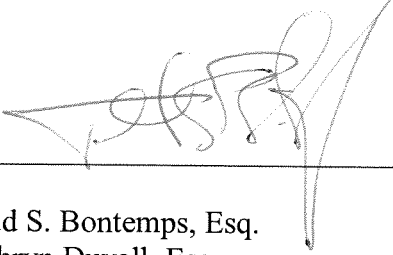
11. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark, all to the detriment of Pure Storage.

12. Wherefore, Pure Storage prays that this Opposition be sustained and that Application Serial No. 85/287297 be denied and refused registration.

COOLEY LLP

Date: December 14, 2011

By: _____



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Kathryn Duvall, Esq.
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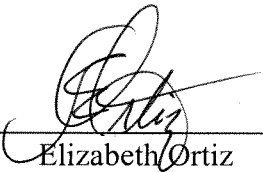
CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2011 I mailed the foregoing NOTICE OF OPPOSITION regarding Pure Storage, Inc. v. InMage Inc. to Counsel for Applicant and Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

InMage Inc.
Attn: Legal Dept.
Suite 104, 3255-1 Scott Blvd.
Santa Clara, CA 95054

Raj Abhyanker
Raj Abhyanker P.C.
1580 W. El Camino Real, Suite 8
Mountain View, CA 94040

Date: December 14, 2011



Elizabeth Ortiz

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